Department of Energy
Washington, DC 20585
April 17, 2002

RCRA Docket Information Center
Office of Solid Waste (5305G)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0002

Docket Number F-1999-IBRA-FFFFF

Dear Sir or Madam:

Re: 67 FR 2518, "Resource Conservation and Recovery Act Burden Reduction Initiative"

On January 17, 2002, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking (NPRM) for reducing the burden imposed by the Resource Conservation and Recovery Act (RCRA) on the regulated community. EPA's main proposals for burden reduction include: (1) reducing reporting requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs); (2) reducing certain mandated TSDF self-inspection frequencies; and (3) streamlining certain land disposal restrictions paperwork requirements.

The Department of Energy (DOE) supports EPA's effort to reduce the burden of RCRA regulation while protecting human health and the environment and appreciates the opportunity to comment on the NPRM. DOE's comments relate to the preamble and the regulatory text proposals presented in the NPRM. For clarity, each specific comment is preceded by a reference to the section of the NPRM to which it applies and a brief description is given in boldface type of the specific issue to which DOE's comment is directed.

If you have questions or need clarification of our comments, please contact Al Sikri of my staff at (202) 586-1879, or e-mail: *atam.sikri@eh.doe.gov.*

Sincerely,

Andy Lawrence
Director,
Office of Environmental Policy and Guidance

Enclosure

UNITED STATES
DEPARTMENT OF ENERGY

Comments On
RESOURCE CONSERVATION AND RECOVERY ACT
BURDEN REDUCTION INITIATIVE

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GENERAL COMMENT

The U.S. Department of Energy (DOE) appreciates the opportunity to review and comment on the U.S. Environmental Protection Agency (EPA) notice of proposed rulemaking (NPRM) intended to reduce the administrative burden imposed by the Resource Conservation and Recovery Act (RCRA) on the states, the public, and the regulated community. DOE agrees with EPA that the reports the Agency proposes to eliminate are rarely used by regulatory agencies and that most of the modifications proposed by EPA will help to streamline the administrative process, without reducing the level of protection for human health and the environment already established by EPA's RCRA regulatory program. Accordingly, DOE urges EPA to finalize the proposed regulatory changes with certain revisions, which are described below in specific comments on the preamble and proposed regulatory text portions of the NPRM.

SPECIFIC COMMENTS ON PREAMBLE

I. Background and Purpose of Today's Proposed Rulemaking

I.E How Can I Influence EPA's Thinking on This Rule?

1. p. 2520, col. 1 – EPA invites commenters to provide (1) different views on options proposed in the NPRM, (2) new approaches not considered in the NPRM, (3) descriptions of how the proposed rule would affect the commenter, and (4) other relevant information.

DOE requests that EPA consider adopting the additional burden reduction modifications listed below, which were not mentioned in the NPRM, the Notice of Data Availability (64 FR 32859-32868; June 18, 1999), or the burden reduction background documents available on the Internet. DOE believes that, if implemented, these suggested changes would further reduce the burden of RCRA without reducing protection of human health and the environment.

a. *Allow Facilities the Opportunity To Adjust the Frequency of Self-Inspections In Areas Subject To Spills [40 CFR 264.15(b)(4)].* The existing 40 CFR 264.15(b) requires the owner/operator of a hazardous waste management facility to develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards. For areas subject to spills, such as loading and unloading areas, the existing 40 CFR 264.15(b)(4) indicates that they "must be inspected daily when in use."

DOE requests that EPA consider giving the responsible regulatory agency authority to adjust, on a case-by-case basis, the frequency of inspection in areas subject to spills at hazardous waste treatment, storage, and disposal facilities. DOE believes this change would be very similar to the

proposal in the NPRM that owners/operators of tanks, containers, and containment buildings be allowed the opportunity to adjust the frequency of their self-inspections (p. 2527, cols. 1 & 2). DOE believes the change is justified because activities that may cause spills usually allow the spills to be easily detected and quickly cleaned up without a specific delay caused by an inspection.

b. *Revise the Requirement For Listing of Emergency Equipment In the Contingency Plan [40 CFR 264.52(e)].* The existing 40 CFR 264.52(e) requires that the contingency plan for a hazardous waste treatment, storage, or disposal facility "include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required." This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities. DOE believes it is generally unnecessary for the contingency plan to include a physical description and outline of the capabilities of every item of common emergency equipment, such as fire extinguishers. Accordingly, DOE suggests that 40 CFR 264.52(e) be revised so that such information is required only for items that are unique or have customized uses at the permitted facility.

II. Our Main Burden Reduction Proposals

II.A We Propose To Reduce the Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)

1. pp. 2521 - 2526 – A chart titled "RCRA Reporting and Recordkeeping Requirements Proposed for Elimination or Modification" is provided. According to the preamble, the chart "contains all of the reporting and recordkeeping requirements we propose to eliminate or modify."

DOE notes that the statement in the preamble regarding the scope of the chart on pages 2521 through 2526 is somewhat misleading because the chart lists a number of proposed modifications to administrative requirements other than reporting or recordkeeping requirements. Most of these proposed modifications are further discussed and explained elsewhere in the preamble. However, those listed below are not. While DOE supports these proposed changes, except as explained in Specific Comments on the Preamble II.A, item 2 and III, item 1, it is suggested that the preamble to the final rule more fully discuss the reasons for making each change.

- § 264.98(c) – EPA proposes to modify the existing requirement to "conduct a ground-water monitoring program for each chemical parameter and hazardous constituent specified in the permit." Under the proposed modified regulations, the Regional Administrator would have discretion to allow sampling for a site-specific subset of constituents from the Appendix IX list (see Specific Comment on the Preamble II.A, item 2).

- § 264.193(g) and (h) – EPA proposes to modify the existing requirement that the Regional Administrator grant a variance before a permitted hazardous waste tank is allowed to operate with a secondary containment or release detection system that does not meet specifications. Under the proposed modified regulations, no variance would be needed as long as the owner/operator implements and keeps records of alternate tank design and operating practices

that would prevent migration of hazardous waste and hazardous constituents into the groundwater or surface water.

- § 265.193(e)(3)(iii) – EPA proposes to modify the existing requirement that the Regional Administrator approve, based on a demonstration by the owner/operator, the built-in leak detection system on an interim status double-walled tank, if the earliest practicable time that the system can detect a release exceeds 24 hours. Under the proposed modified regulations, no demonstration or Regional Administrator approval would be required, provided that leak detection would occur at the earliest practicable time.

- § 265.193(g)(1) and (h) – EPA proposes to modify the existing requirement that the Regional Administrator grant a variance for any design of an interim status tank that does not incorporate secondary containment. Under the proposed modified regulations, Regional Administrator approval would not be required, provided that records kept at the facility either would demonstrate that a release would not pose a human health hazard or would describe design and operating practices, together with location characteristics, that would be as effective as secondary containment.

- § 266.103(d) – EPA proposes to modify the existing requirement that, every three years, an interim status boiler or industrial furnace (BIF) must test for compliance with emissions standards and submit the results to the responsible regulatory agency. Under the proposed modified regulations, compliance testing of the emissions from an interim status BIF and submission of the results to the responsible regulatory agency would be required every five years (see Specific Comment on the Preamble III, item 1).

2. <u>p. 2521, chart, item concerning § 264.98(c)</u> – The chart indicates that EPA plans to modify the existing requirement to "conduct a ground-water monitoring program for each chemical parameter and hazardous constituent specified in the permit" so that it gives the Regional Administrator discretion to allow sampling for a site-specific subset of constituents from the Appendix IX list.

DOE does not object to the proposed modification of 40 CFR § 264.98(c). However, DOE requests that the need for the proposed change be clarified. The existing § 264.98(c) reads as follows:

> (c) The owner or operator must conduct a ground-water monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to paragraph (a) of this section in accordance with §264.97(g). The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under §264.97(h).

Nothing in this existing subsection suggests that all samples collected for the detection groundwater monitoring program must be analyzed for every chemical parameter and hazardous constituent listed in Appendix IX. On the contrary, the existing § 264.98(c) directs analysis of groundwater samples for only the parameters or constituents specified in the permit pursuant to § 264.98(a). Such parameters and constituents are to be selected by the Regional Administrator after considering four factors, which are listed in § 264.98(a). It appears that the existing § 264.98(c) already gives the Regional Administrator discretion for the purpose of detection monitoring to allow groundwater sampling for a site-specific group of chemical parameters and hazardous constituents, which may be a subset of constituents from the

Appendix IX list. Therefore, it is not clear how the proposed modification to § 264.98(c) reduces the regulatory burden of the section.

II.C We Propose To Allow Facilities the Opportunity To Adjust the Frequency of Their Self-Inspections

1. <u>p. 2527, col. 1</u> – EPA proposes to allow inspections of containers, containment buildings, and tanks to occur on a case-by-case basis less frequently than the otherwise required weekly frequency, provided that inspections are conducted at least monthly.

DOE supports the proposed allowance for decreased inspection frequencies on a case-by-case basis for containers, containment buildings and tanks. DOE believes this approach would provide facilities with incentives for establishing more protective designs and environmental management systems and compliance practices in order to obtain regulatory relief in the form of decreased inspection frequencies. DOE suggests, however, that in the final rule the preamble discussion cite the correct regulatory sections applicable to inspections of containers, containment buildings, and tanks, which are the following:

- Containers: 40 CFR § 264.174 and § 265.174
- Containment Buildings: 40 CFR § 264.1101(c)(4) and 265.1101(c)(4)
- Tanks: 40 CFR § 264.195(b) and § 265.195(a)

The NPRM preamble (p. 2527, col. 1) incorrectly cites 40 CFR § 264.170 and § 265.170 for containers, 40 CFR § 264.1100 and § 265.1100 for containment buildings, and 40 CFR § 264.190 and § 265.190 for tanks.

III. Other Burden Reduction Proposals

1. <u>p. 2529, col. 1, *Boiler and Industrial Furnace Records To Be Kept 3 Years*</u> – EPA proposes to standardize the retention period for all records required to be kept by interim status boilers and industrial furnaces to three years, which is consistent with other RCRA recordkeeping retention regulations.

In general, DOE supports this proposed modification of the record retention period for interim status of BIFs. However, the chart, titled "RCRA Reporting and Recordkeeping Requirements Proposed for Elimination or Modification" (see p. 2526), indicates that EPA is also proposing to reduce the frequency of emissions compliance testing for interim status BIFs from once every three years to once every five years. If EPA finalizes a three-year retention period for all BIF records and also reduces the frequency of emissions compliance testing for interim status BIFs to once every five years, DOE is concerned that an interim status BIF would be allowed to discard the records for one compliance testing event up to two years before the next compliance testing event occurs. While it is not clear that this would create any particular problem, DOE suggests that it would be better for the retention period for records of interim status BIF compliance testing events to not be shorter than the length of time between such events. Therefore, DOE urges that the recordkeeping retention regulations expressly state that, unlike other records for interim status BIFs, the records of each emissions compliance testing event must be retained for five years or until the next compliance testing event is completed and documented, whichever time is shorter (see Specific Comments on Proposed Regulatory Text, item 6).

2. **p. 2529, col. 1, *Certified Hazardous Materials Managers* – EPA proposes to modify most of the RCRA certification requirements to allow a person who is a "Certified Hazardous Materials Manager" to make the certification as an alternative to certification by an independent, qualified, registered professional engineer.**

DOE supports allowing Certified Hazardous Materials Managers (CHMM) to make RCRA certifications as an alternative to obtaining such certifications from independent, qualified, registered professional engineers. However, DOE requests that further guidance and clarification be provided in the preamble to the final rule as follows:

- Since there currently are two levels of CHMM available from the Institute of Hazardous Materials Management (Senior and Master), guidance concerning which level may provide RCRA certifications under the modified regulations should be provided.
- Clarification is needed as to why environmental professionals who have been credentialed under programs such as the Air & Waste Management Association's Qualified Environmental Professional program could not also provide RCRA certifications.

3. **p. 2529, col. 3 and p. 2530, col. 1, *Consolidation of Facility Contingency Plans Is Encouraged* – EPA proposes to clarify §§ 264.52(b) and 265.52(b) so that they will encourage owners and operators of hazardous waste management facilities to consider developing one contingency plan based on the National Response Team's integrated Contingency Plan Guidance ("One Plan").**

DOE supports the addition of clarifying regulatory language that encourages hazardous waste facility owners/operators to consider developing single, integrated contingency plans. The Department requests, however, that EPA consider also adding language to the regulations clarifying that, when modifications are made to non-RCRA provisions in an integrated contingency plan, making such changes would not trigger the need for a RCRA permit modification. DOE requests this clarification because one DOE facility reports that the primary reason it has not previously integrated its RCRA contingency plan with other emergency or contingency plans at the facility (as allowed by existing 40 CFR §§ 264.52(b)) is a concern about that applicability of RCRA permit modification requirements. Specifically, it is unclear whether RCRA facilities having integrated contingency plans are required to process changes to such plans as RCRA permit modifications, whether or not the provisions being changed are based on RCRA requirements.

Existing provisions in 40 CFR 270.42 require that changes to a RCRA facility's contingency plan must be processed as RCRA permit modifications. Specifically, replacing, upgrading, or relocating emergency equipment listed in the contingency plan must be processed as a Class 1 permit modification [40 CFR 270.42, Appendix I]. Changing the name, address, or phone number of a responsible person or agency identified in the contingency plan also must be processed as a Class 1 permit modification [40 CFR 270.42, Appendix I]. Changes in emergency procedures (i.e., spill or release response procedures) and removal of equipment from the emergency equipment list must be processed as Class 2 permit modifications [40 CFR 270.42, Appendix I]. Any other change to a RCRA facility's contingency plan must be processed as a Class 3 permit modification, unless the facility owner/operator obtains a case-specific determination from the responsible regulatory agency that processing the change as a Class 1 or Class 2 permit modification would be acceptable [40 CFR § 270.42(d)].

DOE suggests that a provision be added to 40 CFR 270.42 indicating that a change to a RCRA facility's integrated contingency plan requires a RCRA permit modification only if the item being changed implements a requirement imposed by RCRA. Specifically, DOE suggests the following addition to 40 CFR § 270.42 (highlight = addition):

> **§ 270.42 Permit modification at the request of the permittee.**
>
> * * * * *
>
> (k) *Modifications to Integrated Contingency Plans.* No permit modification is necessary to change a provision in an integrated Contingency Plan, if the integrated contingency plan was developed pursuant to § 264.52(b), and if the provision being changed is not mandated by §§ 264.52(a), (c), (d), (e), or (f).

4. p. 2530, cols. 1&2, *We Propose To Streamline Groundwater Monitoring Requirements* – EPA proposes to allow owners/operators of TSDFs to report on the effectiveness of corrective action on an annual basis instead of the current semi-annual basis.

DOE supports changing the frequency of reports on the effectiveness of groundwater corrective action from semi-annual to annual. As noted in the preamble of the NPRM, groundwater monitoring and cleanup is almost always a multi-year or even multi-decade effort, and DOE agrees that annual reporting should provide adequate information to ensure compliance. However, DOE notes that the preamble discussion on page 2530 does not specify the regulatory sections to which the proposed reporting modifications would apply. There are three existing regulatory sections that require semi-annual reports describing the progress of corrective action.

(1) Existing § 264.100(g) applies to permitted regulated units (i.e., surface impoundments, waste piles, land treatment units, and landfills that have received hazardous wastes after January 26, 1982) required to establish a corrective action program pursuant to 40 CFR 264, Subpart F.
(2) Existing § 264.113(e)(5) applies to permitted hazardous waste surface impoundments receiving only non-hazardous wastes and not in compliance with statutory liner and leachate collection system requirements.
(3) Existing § 265.113(e)(5) applies to interim status hazardous waste surface impoundments receiving only non-hazardous wastes and not in compliance with statutory liner and leachate collection system requirements.

DOE believes the reason stated in the preamble for reducing the required frequency of corrective action progress reporting is equally valid with respect to the circumstances addressed by all three of these existing regulatory sections. Nevertheless, the NPRM proposes regulatory language that would reduce the frequency of corrective action progress reporting just for permitted and interim status hazardous waste surface impoundments receiving only non-hazardous wastes and not in compliance with statutory liner and leachate collection system requirements [see proposed §§ 264.113(e)(5) (p. 2535) and 265.113(e)(5) (p. 2540)]. The NPRM does not propose regulatory language that would reduce the frequency of progress reporting for corrective action at permitted regulated units required to establish a corrective action program pursuant to 40 CFR 264, Subpart F. Therefore, DOE requests that EPA consider also modifying § 264.100(g) in the final rule so that progress reporting for corrective action at permitted regulated units would be required annually rather than semi-annually.

5. p. 2530, cols. 1&2, *We Propose To Streamline Groundwater Monitoring Requirements* (§ 264.99(g)) – EPA proposes to modify § 264.99(g) so that facilities who are doing compliance monitoring no longer must conduct an annual analysis of all Appendix IX constituents at all monitoring wells. Instead, the responsible regulatory agency would be allowed to approve, on a case-by-case basis, annual sampling for a subset of Appendix IX constituents at a subset of the available monitoring wells.

DOE supports modifying the required scope of the annual enhanced groundwater compliance monitoring event mandated by the existing 40 CFR § 264.99(g). This change will not only eliminate unnecessary records and reports, but will also reduce the amount of wastewater generated from purging of monitoring wells during sampling events. In initially establishing RCRA groundwater monitoring requirements in 1982, EPA believed that past waste disposal practices were not sufficiently controlled to allow reliance on knowledge of a site as the sole indicator of constituents of concern for purposes of groundwater monitoring. As a consequence, analysis of groundwater samples for all Appendix VIII constituents (later changed to Appendix IX) was required annually to check for new contaminants. DOE concurs that insufficient knowledge of past waste disposal practices may have been a reasonable concern at a time when pre-RCRA land disposal units were first becoming subject to RCRA authority, because waste disposal records for units whose operation predated RCRA may indeed have been incomplete. Currently, however, RCRA Subtitle C requires that operating land disposal units meet stringent design requirements and maintain robust records pertaining to waste disposal. As a result, identification of specific Appendix IX constituents having potential to migrate to groundwater at a particular unit should be a fairly straightforward undertaking. Therefore, DOE agrees that it should no longer be necessary to conduct annual monitoring for all Appendix IX constituents, if the responsible regulatory agency determines that monitoring for a subset of such constituents would be protective of human health and the environment. Notwithstanding, DOE believes that certain clarifying changes to the proposed text for 40 CFR § 264.99(g) would be helpful (see Specific Comments on Proposed Regulatory Text, item 7).

SPECIFIC COMMENTS ON PROPOSED REGULATORY TEXT

1. p. 2534, cols. 1&2, § 264.16(a)(3)(i) and p. 2538, col. 2, § 265.16(a)(3)(i) – EPA proposes to revise the text of 40 CFR §§ 264.16(a)(3)(i) and 265.16(a)(3)(i) to read as follows:

> **(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:**
> **(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and …**

DOE supports modifying the RCRA personnel training requirements to eliminate overlap with the Occupational Safety and Health Administration (OSHA) regulations addressing training requirements for emergency response personnel. However, Section 4(b)(1) of the Occupational Safety and Health Act (OSH Act) of 1970 (P.L. 91-596) waives OSHA's jurisdiction in cases where another Federal agency has exercised its statutory authority to prescribe or enforce occupational safety and health standards. Relying on this section of the OSH Act, in 1974, the Department of Labor (DOL) explicitly recognized the Atomic Energy Commission's (AEC's) authority to establish and enforce occupational safety and health standards at AEC-sponsored contractor facilities. Subsequently, DOL and DOE, a successor agency to the AEC, reaffirmed this arrangement at DOE's government-owned, contractor-operated (GOCO) facilities in an August 10, 1992, Memorandum of Understanding (MOU). Under the 1992 MOU, OSHA

advises DOE on worker protection, but DOE regulates all aspects of worker health and safety at almost all of its nuclear facilities. DOE exercises its authority over working conditions at GOCO facilities through the system of DOE Orders and a program of internal oversight at these facilities. For this reason, DOE is concerned that, since OSHA regulations do not apply directly to many DOE contractors, the phrase, "Have received training *required* by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable" [emphasis added], in EPA's proposed regulatory text for §§ 264.16(a)(3)(i) and 265.16(a)(3)(i) might be misinterpreted as not applicable to such contractors. Accordingly, DOE suggests that in the final version of §§ 264.16(a)(3)(i) and 265.16(a)(3)(i), the quoted phrase be modified to read as follows: "Have received training *defined* by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q)."

2. <u>p. 2534, col. 3, §264.73(b)(1)</u> – EPA proposes to revise the text of 40 CFR § 264.73(b)(1) to read as follows:

> **(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be maintained in the operating record until closure of the facility;**

The existing § 264.73(b)(1) reads as follows: "(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility *as required by Appendix I*" (emphasis added). DOE requests that, in the final revised version of § 264.73(b)(1), EPA consider retaining the phrase "as required by Appendix I," because Appendix I contains useful instructions about the contents of the required records.

3. <u>p. 2534, col. 3, § 264.73(b)(5)</u> – EPA does not propose to revise the text of 40 CFR § 264.73(b)(5).

DOE suggests that 40 CFR § 264.73(b)(5) be revised as indicated below to maintain consistency between this subsection and subsections affected by the other revisions that EPA has proposed in 40 CFR § 264.73(b) (~~strikeout~~ = deletion):

> (5) Records and results of inspections as required by § 264.15(d) ~~(except these data need be kept only three years)~~;

4. <u>p. 2534, col. 3, § 264.73(b)(8)</u> – EPA proposes to revise the text of 40 CFR § 264.73(b)(8) to read as follows:

> **(8) All closure cost estimates, and for disposal facilities, all post-closure cost estimates. This information must be maintained in the operating record until closure of the facility.**

The existing § 264.73(b)(8) reads as follows:

> (8) All closure cost estimates *under §264.142*, and, for disposal facilities, all post-closure cost estimates *under §264.144* (emphasis added).

DOE requests that, in the final revised version of § 264.73(b)(8), EPA retain the existing cross-references to §§ 264.142 and 264.144, because the cross-references provide useful instructions about the contents of the required records.

5. <u>p. 2534, col. 3, § 264.73(b)(10)</u> – EPA proposes to revise the text of 40 CFR § 264.73(b)(10) to read as follows:

> **(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 *of this chapter,* a petition pursuant to § 298.6 [sic] *of this chapter,* or a certification under § 268.8 *of this chapter,* and the applicable notice required by a generator under § 268.7(a) *of this chapter*. This information must be maintained in the operating record until closure of the facility. (emphasis added)**

a. DOE suggests that, for clarity, the phrase "of this chapter," which appears three times in the proposed version of § 264.73(b)(10), either be eliminated or changed to "of this part." The phrase "of this chapter" is not used in the existing version of § 264.73(b)(10), which is otherwise identical to the proposed version, except that the existing version does not contain the last sentence in the proposed version. DOE does not believe that adding the phrase "of this chapter" to § 264.73(b)(10) improves the regulatory language. On the contrary, because the section numbering scheme in the Code of Federal Regulations (CFR) reflects the title number and the part number (e.g., 40 CFR § 264.xxx), but does not reflect the chapter number, DOE believes that referring to the "chapter," rather than the "part" may actually confuse some readers.

b. In the fifth line of the quote above, "§ 298.6" should be corrected to read "§ 268.6."

6. <u>p. 2535, cols. 1&2, § 264.99(g)</u> – EPA proposes to revise 40 CFR § 264.99(g) so that facilities who are doing compliance monitoring no longer must conduct an annual analysis of all Appendix IX constituents at all monitoring wells. Instead, the responsible regulatory agency would be allowed to approve, on a case-by-case basis, annual sampling for a subset of Appendix IX constituents at a subset of the available monitoring wells.

DOE suggests that, to improve its clarity, the final text of 40 CFR § 264.99(g) be altered from that proposed by EPA. Specifically, it is unclear whether the annual enhanced compliance monitoring event must be renegotiated every year, and if so, what process must be used. DOE requests that EPA consider the following approach (**highlight** = addition; ~~strikeout~~ = deletion):

> (g) **Annually,** ~~T~~the owner or operator must **determine whether additional hazardous constituents from Appendix IX of part 264, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis (1) which sample collection event during the year will involve enhanced sampling, (2) the number of monitoring wells at the compliance point to undergo enhanced sampling,**

(3) the number of samples to be collected from each of these monitoring wells, and (4) the specific constituents from Appendix IX of part 264 for which these samples must be analyzed. ~~analyze samples from monitoring wells at the compliance point. The number of wells and samples will be worked out on a case-by-case basis with the Regional Administrator. The specific constituents from Appendix IX of part 264 to be analyzed will also be worked out on a case-by-case basis with the Regional Administrator. This analysis must be done annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f).~~ If the enhanced sampling event indicates that~~the owner or operator finds~~ Appendix IX constituents are present in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the ~~Appendix IX~~ analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

7. p. 2543, col 1, § 266.103(k) – EPA proposes to modify 40 CFR § 266.103(k) so that data and information in the operating records of interim status BIFs must be retained for three years, rather than until closure.

As was explained in Specific Comment on the Preamble III, item 1, DOE is concerned that if the frequency of emissions compliance testing for interim status BIFs is changed from once each three years to once each five years [p. 2543, col. 1, § 266.103(d)], then the proposed change to 40 CFR § 266.103(k) would allow an interim status BIF to discard the records for one compliance testing event up to two years before the next compliance testing event occurs. Accordingly, DOE requests that EPA consider adopting in the final rule the following revisions to the proposed text for § 266.103(k) (**highlight** = addition; ~~strikeout~~ = deletion):

(k) *Recordkeeping*. The owner or operator must keep in the operating record of the facility all information and data required by this section**, except the compliance testing data required by § 266.103(d),** for three years. **The compliance testing data required by § 266.103(d) must be kept in the operating record for five years, or until the next compliance test is completed, whichever is shorter**.

8. p. 2543, col. 2, § 268.7 – EPA proposes to remove §§268.7(a)(1) and 268.7(a)(6) and re-designate paragraphs (a)(2) through (a)(5) as (a)(1) through (a)(4) and (a)(7) through (a)(10) as (a)(5) through (a)(8).

DOE suggests that, in the final rule, EPA consider also making conforming changes in any cross-references within the hazardous waste regulations to the re-designated subsections of § 268.7. Most such cross-references appear within 268.7 itself. While making these changes, DOE suggests that EPA also consider removing existing cross-references to § 268.8, since that section was removed and reserved in 1996 [61 FR 15599, April 8, 1996].